STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 4, 2013
v	No. 308330 St. Clair Circuit Court
JESSE DAVIS WILSON, JR., Defendant-Appellant.	LC No. 11-001551-FH

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

A jury found defendant guilty of possession with intent to deliver 50 to 449 grams of cocaine, MCL 333.7401(2)(a)(*iii*), maintaining a drug house, MCL 333.7405(1)(d), felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, possession of a firearm in the commission of a felony (felony-firearm), MCL 750.227b(1), and possession of marijuana, MCL 333.7403(2)(d). For the reasons set forth below, we affirm.

Defendant challenges the denial of his motion to suppress evidence seized pursuant to a search warrant. On June 13, 2011, Officer James Gilbert of the Port Huron Police obtained the warrant. Officer Gilbert's affidavit described two controlled buys, one that occurred within the prior 36 hours, in which a confidential informant bought cocaine from a person known as "Cleepy."

Defendant challenged information in the warrant, but we hold that the circuit court correctly denied defendant's motion to suppress because the application for a search warrant was not defective. The affidavit stated the credibility and reliability of the informant, described actions occurring within the previous 36 hours, and contained more than sufficient information on which a magistrate could base a finding of probable cause.

At the preliminary examination and at trial, police officers testified that, on June 13, 2011, they searched defendant, his car and his home pursuant to the warrant. When the officers searched defendant's basement, they saw stuffing from sofa cushions on the floor. In the armrests of the sofa, officers found large bags of crack cocaine and smaller bags packaged for sale. There appeared to be about an eighth of a kilogram of cocaine, which is also called a "big eighty." The officers also found powder cocaine in one of the armrests. The 363 grams of cocaine seized from the sofa had a street value of approximately $36,000. Sergeant Matthew Kind testified that this is a very large dealer amount, and a larger amount than a street dealer

would normally possess. In the master bedroom of the house, officers found gun holsters, a rifle scope, a digital scale, a notebook with records of drug sales, and marijuana in a jar under the bed.[1]

While officers were searching defendant's house, another police officer stopped defendant's vehicle in a traffic stop. As defendant walked to the patrol car, a loaded gun fell from his clothing and landed on the ground. Officers interviewed defendant at the St. Clair Sheriff's Department, where he admitted that the gun was his and explained that he needed it for protection. He did not admit that he possessed any drugs until the police told him how much was found and where, and he then admitted he possessed both cocaine and marijuana. Defendant also had a music production business and home improvement and rental business. Records and bank statements for these businesses were found in defendant's home, and music equipment was in the basement near the drug-filled sofa.

Defendant contends his confession, drugs, gun, and other evidence seized were inadmissible as "fruit of the poisonous tree." Application of the exclusionary rule to an asserted Fourth Amendment violation is a question of law, reviewed de novo. *People v Keller*, 479 Mich 467, 473; 739 NW2d 505 (2007); *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). However, the trial court's factual findings are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). The magistrate's determination of probable cause should be paid "great deference." *Keller*, 479 Mich at 474, 477, quoting *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992).

The state and federal constitutions guarantee the right to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Here, defendant claims that police violated his constitutional rights by relying on an invalid search warrant. In reviewing the magistrate's decision, the court considers whether there was a substantial basis for finding probable cause to believe contraband or evidence of crime would be found in a particular place. *Illinois v Gates*, 462 US 213, 238-239; 103 S Ct 2317; 76 L Ed 2d 527 (1983); *Keller*, 479 Mich at 475; *People v Darwich*, 226 Mich App 635, 636-637; 575 NW2d 44 (1997). MCL 780.653 allows the use of unnamed informants to secure search warrants:

> The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:
>
> (a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.

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[1] Defendant said that he needed the marijuana for his diabetes, but he was not a registered medical marijuana patient.

> (b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

An affidavit for a search warrant may be challenged for inaccurate statements, but if other information in the warrant establishes probable cause, the warrant is valid. *People v Poindexter*, 90 Mich App 599, 603; 282 NW2d 411 (1979). If a defendant seeks to impeach an affidavit, he must make an offer of proof that points out specific information that is false, along with supporting reasons and affidavits or sworn statements of witnesses. If affidavits or sworn statements cannot be produced, their absence should be satisfactorily explained. *Franks v Delaware*, 438 US 154, 171-172; 98 S Ct 2674; 57 L Ed 2d 667 (1978); *Poindexter*, 90 Mich App at 604-605. An informant need not be produced unless defendant meets these threshold requirements for an evidentiary hearing, and then only where "essential to a fair determination of a case." *Poindexter*, 90 Mich App at 605, 608, quoting *People v Stander*, 73 Mich App 617, 621-623; 251 NW2d 258 (1976), and *Rovario v United States*, 353 US 53, 60-62; 77 S Ct 623; 1 L Ed 2d 639 (1957). It is well-settled that it is not necessary to produce the informant "whenever a defendant makes a bald statement that no informant exists." *Poindexter*, 90 Mich App at 610.

Here, defendant did not satisfy the requirements to merit the production of the informant or to quash the search warrant. Defendant's motion to suppress alleged that (1) the affidavit failed to establish the reliability of the anonymous confidential source who provided the allegations of a controlled buy (actually, two buys), (2) the warrant was based on stale information, and (3) the affidavit supporting the warrant claimed that the defendant was known as "Cleepy," but this was in fact the nickname of defendant's cousin, Ahmad Middleton. The only affidavit attached to the motion was that of Trael Coleman, who claimed that Middleton was "Cleepy," and that Coleman never heard defendant called that name.

These assertions did not defeat the allegations in the search warrant that defendant's nickname was "Cleepy." Also, defendant's claims did not show that the confidential informant who provided information in 2011 was not credible or that his information was unreliable. Most importantly, Officer Gilbert's affidavit provided sufficient facts to support a finding of probable cause. The affidavit stated that, in May 2011, a "credible and reliable confidential informant," who had provided reliable information in the past about local drug dealers, advised that "Cleepy" was selling large quantities of drugs out of the house at 1304 Court Street, Port Huron. Police saw defendant come and go out of this house several times during a short period, which was consistent with narcotics trafficking. Defendant had prior convictions for drug possession and weapons violations. The informant had seen "Cleepy" in possession of very large quantities of cocaine. Further, the affidavit stated that police had conducted two controlled buys using this informant in May 2011. Using pre-recorded funds, the informant bought cocaine from "Cleepy" and officers who watched the buys saw defendant leave his house, go to the prearranged location, and meet with the informant. Further, police searched the informant before he went to meet defendant. When the informant returned, he had purchased cocaine from defendant. The second buy occurred within 36 hours of when Officer Gilbert drafted the affidavit.

These facts alone were sufficient to establish probable cause. In his motion to suppress, defendant failed to include any offer of proof that would impeach evidence of the two controlled

buys, and controlled buys by unnamed informants are sufficient to establish probable cause. Indeed, the reliability of the informants' statements may be shown by the success of the controlled buys. *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995); *People v Wares*, 129 Mich App 136, 141-142; 341 NW2d 256 (1983). Moreover, the assertion that someone else was known as "Cleepy" does not prove that defendant was not also known by this name. The informant twice contacted someone he knew was "Cleepy," and this contact resulted in defendant selling the informant drugs. These facts were not refuted in any way by defendant's motion, Coleman's affidavit, or any evidence produced at the preliminary examination or hearing on defendant's motion. Defendant also made no showing that undermined the informant's credibility or called into question his existence. Accordingly, the court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan